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General Assembly

FORTY-SIXTH SESSION

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SIXTH COMMITTEE
17th meeting
held on
Monday, 21 October 1991
at 3 p.m.
New York

SUMMARY RECORD OF THE 17th MEETING

Chairman: Mr. AFONSO (Mozambique)

later: Mr. SANDOVAL (Ecuador)

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(a) REPORT OF THE SECRETARY-GENERAL (continued)

(b) CONVENING, UNDER THE AUSPICES OF THE UNITED NATIONS, OF AN INTERNATIONAL CONFERENCE TO DEFINE TERRORISM AND TO DIFFERENTIATE IT FROM THE STRUGGLE OF PEOPLES FOR NATIONAL LIBERATION (continued)

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The meeting was called to order at 3 p.m.

AGENDA ITEM 125: MEASURES TO PREVENT INTERNATIONAL TERRORISM WHICH ENDANGERS OR TAKES INNOCENT HUMAN LIVES OR JEOPARDIZES FUNDAMENTAL FREEDOMS AND STUDY OF THE UNDERLYING CAUSES OF THOSE FORMS OF TERRORISM AND ACTS OF VIOLENCE WHICH LIE IN MISERY, FRUSTRATION, GRIEVANCE AND DESPAIR AND WHICH CAUSE SOME PEOPLE TO SACRIFICE HUMAN LIVES, INCLUDING THEIR OWN, IN AN ATTEMPT TO EFFECT RADICAL CHANGES (continued)

(a) REPORT OF THE SECRETARY-GENERAL (continued)

(b) CONVENING, UNDER THE AUSPICES OF THE UNITED NATIONS, OF AN INTERNATIONAL CONFERENCE TO DEFINE TERRORISM AND TO DIFFERENTIATE IT FROM THE STRUGGLE OF PEOPLES FOR NATIONAL LIBERATION (continued) (A/46/346 and Add.1 and 2)

1. Mr. LUNA (Peru) said that despite the encouraging changes on the international scene in recent years, there had been an insidious growth of terrorism in many parts of the world, including Latin America and Peru. The entire international community recognized that terrorism was a criminal act and in no circumstances constituted a form of political action. Terrorism was also a flagrant and systematic violation of the fundamental rights of the individual, as had once again been established by the Commission on Human Rights in resolution 1991/29. Just as States must respect human rights, so all individuals, as a corollary to their intrinsic rights, had an obligation to respect those rights in the case of others. Terrorism was a serious threat to the stability of nations, particularly when it undermined the democratic constitutional order and vital economic infrastructure of developing countries. It hampered relations among States; the criminal activities of certain groups and individuals could not be allowed to impede the international cooperation so vitally needed for development.

2. If terrorism was to be effectively controlled, the phenomena associated with it must also be tackled. Terrorist violence and the enormous resources of drug traffickers constituted a doubly menacing threat. Unscrupulous arms dealers and mercenaries provided terrorist criminals with the supplies and training they needed.

3. His Government reiterated its categorical, unconditional condemnation of terrorism in all its forms and manifestations. No overt or covert action amounting to tolerance, inaction or collaboration of third States with terrorist groups could be permitted. Since 1980 terrorists had undertaken a campaign of destruction in Peru with the ultimate objective of destroying Peruvian society; some 24,000 lives had been lost, with material destruction amounting to some $20,000 million. In a democratic system with free elections at all levels of Government, terrorist groups were trying to impose totalitarian autocracy by means of crime and terror. They were being financed and supplied by drug traffickers bent on revenge against society. Amnesty International, at its meeting in Yokohama in September 1991, had recognized the need to prevent such atrocities.

(Mr. Luna, Peru)

4. Terrorism must be combated in an integral manner at the domestic and international levels. Peru was taking domestic measures to protect society and ensure full respect for human rights. A national council for peace was meeting in Lima with the task of formulating a national plan to bring about peace and the full observance of human rights, including the rights of detained persons.

5. Peru was a party to major international instruments relating to terrorism such as the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the Tokyo, Hague and Montreal Conventions and had signed the Convention on the Marking of Plastic Explosives for the Purpose of Detection.

6. Mr. AHMED (Iraq), referring to document S/22687, said that Iraq strongly repudiated any form of violence which endangered the lives of innocent people. Accordingly, it had made an effective contribution to international efforts to combat terrorism and had acceded to numerous international agreements on terrorism. He cited Iraqi legislation designed to prevent and punish terrorist activity, whilst pointing out that, in Iraq, terrorism was not classed as a political crime. Pursuant to Security Council resolution 687 (1991), Iraq would neither commit nor condone any form of international terrorism, and would not permit any organization so inclined to operate within its territory. Lastly, he reiterated Iraq's strong condemnation of all international terrorist practices.

7. Mr. AL-SABEEH (Kuwait) said that Kuwait attached specific importance to the issue of terrorism, particularly in view of its own bitter experiences, of which he listed examples, with special emphasis on the Iraqi occupation of Kuwait and the acts of State terrorism committed against it by Iraq since its liberation.

8. Mr. AHMED (Iraq), speaking on a point of order, said that the remarks by the representative of Kuwait were irrelevant to the matter under consideration.

9. Mr. Al-SABEEH (Kuwait) continued, saying that the events witnessed in his country confirmed the need for action to eliminate terrorism, which only international cooperation would achieve. Believing it essential to differentiate between terrorism, which it condemned, and popular liberation struggles such as that waged by the Palestinians in the Israeli-occupied territories, his delegation supported the proposed conference. Nevertheless, it saw no reason to await a precise definition before tackling the phenomenon itself, in which sense the United Nations and its specialized agencies had a proven part to play. Having listed the international agreements to which Kuwait was a party, he then made the following suggestions: all forms of officially organized State terrorism should be thoroughly condemned; a determined strategy for combating terrorism should be followed; States which practised terrorism or harboured terrorists should be singled out and boycotted; terrorists should be denied the safe havens which they found in

(Mr. Al-Sabeeh, Kuwait)

certain States; the organization of terrorist acts should be outlawed; acts of sabotage against other States and their citizens should also be outlawed; terrorists should be detained and tried or extradited; States should exchange relevant information with a view to preventing and combating terrorism; no bargains or concessions should be made in respect of terrorist demands; States should accede to and comply with bilateral, regional and international agreements on terrorism; and lastly, domestic legislations should be consistent with the relevant international agreements.

10. Mr. Sandoval (Ecuador) took the Chair.

11. Mr. NYAMIKEH (Ghana) said that international terrorism in all its manifestations was to be unequivocally condemned in that it had brought untold hardship to innocent people and had led to tensions in inter-State relations. His Government wholeheartedly supported the international community's efforts to combat the problem and had acceded to various Conventions aimed at its prevention and final elimination. In that endeavour the General Assembly, in its resolution 40/61, had broken new ground by calling for the convening of an international conference to define terrorism and to study its underlying causes.

12. International cooperation to combat terrorism would, however, remain ineffective if the problem itself were not clearly defined. In particular, a deliberate attempt was being made to divert attention from the phenomenon of State terrorism, which took such forms as mercenary activities, armed intervention in the internal affairs of other States, colonial occupation, threatened aggression and alien domination, and which had been used to destabilize constitutionally elected Governments in developing countries. In that sense, it seemed inappropriate to condemn as "terrorist" the South African and Palestinian liberation movements when the South African and Israeli authorities were prepared to use violence against the civilian population on a daily basis and on a massive scale. In his delegation's view, peoples languishing under such regimes were entitled to use all the means at their disposal to assert their right to self-determination.

13. It was regrettable that during the negotiations leading to the adoption of General Assembly resolution 44/29, basic principles embodied in the Charter of the United Nations had been called in question. His delegation had joined in the consensus on the resolution, but had found itself obliged to reserve its position on some of the paragraphs as adopted. It took the view that there were no grounds for supposing that terrorism could not be defined, or that it could not be distinguished clearly from the legitimate struggle of peoples for liberation and self-determination. In the international community's efforts to address the problem, undue emphasis seemed to have been placed on protecting the interests of the stronger nations. The proposed international conference would help to resolve outstanding issues and would give Member States the opportunity to clarify the underlying causes of the problem.

14. Mr. SUPHAMONGKHON (Thailand) said that, despite recent changes in the world situation, the international community remained exposed to international terrorism. Terrorist acts threatened all societies and must be combated by all means compatible with international law. With that aim in view, his country had welcomed the efforts made by the International Civil Aviation Authority (ICAO) to promote universal acceptance of, and strict compliance with, the international conventions on air security. Thailand was a party to most of the relevant conventions on air security, and was considering the possibility of acceding to other multilateral agreements, including the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

15. His delegation had no objection in principle to the proposal to convene an international conference to define terrorism and to differentiate it from the struggle of peoples for national liberation. It did, however, feel that the time might not be ripe for achieving consensus on such a definition, and that efforts should instead be concentrated on ways and means to strengthen international cooperation in the interests of a united and unambiguous stand against terrorism.

16. Mr. ANG SIN TECK (Singapore) said that terrorism, in the sense of the threat or use of violence by individuals or groups for political purposes, manifested itself in various forms, including attacks by religious minorities against the power of majority religions, anti-colonial insurgency, and violence directed against political oppression by totalitarian regimes. Whatever their form of protest, terrorists asserted the legality of their actions and their right to use fear to coerce Governments into making political concessions.

17. His country unequivocally condemned all forms of terrorism and urged all States to refrain from lending credence or legitimacy to actions which could only erode the foundations and principles governing inter-State relations. Cooperation at the international level was essential, and his delegation recalled with satisfaction the successful outcome of the joint police operation between Malaysia and Singapore in arresting those responsible for hijacking a Singapore Airlines aircraft in March 1991.

18. The proposed international conference to define terrorism and to differentiate it from the struggle of peoples for national liberation was unlikely to arrive at a consensus. Would such a definition exclude, for example, a national liberation group which, while pursuing its goals by accepted military means, also employed terrorist tactics?

19. In view of the difficulty of reaching agreement on such complex issues, it would be better to concentrate on bilateral and regional efforts and on initiatives under the auspices of the United Nations aimed at promoting the exchange of information and denying sanctuary to terrorists.

20. Mr. MOLNAR (Hungary) said that his Government categorically rejected and condemned international terrorism in all its forms and manifestations, regardless of its origins, motives, goals and perpetrators, and no matter how legitimate its underlying cause; Hungary strongly advocated the strengthening of international cooperation to eliminate terrorism.

21. It was unfortunate that, even after the adoption of General Assembly resolution 44/29, a number of terrorist acts had been committed; concerted action of States against terrorism therefore remained indispensable at the multilateral, regional and bilateral levels. Hungary was prepared to join other States in that action and in the effort to apprehend perpetrators. It would soon accede to the Convention on the Marking of Plastic Explosives for the Purpose of Detection.

22. With regard to the possibility of convening an international conference on terrorism, Hungary believed that, since the international community had not yet arrived at a common approach necessary to define terrorism and establish universal standards, a highly controversial and politicized debate would be counterproductive and would jeopardize the fragile achievements relating to the issue. It would prefer an approach that would focus on specific acts of terrorism by strengthening the international obligations of States in combating and preventing the concrete forms and manifestations of terrorism. It was convinced that terrorism could be most effectively countered by strict adherence of States to their obligations under international law to prevent terrorist acts and to deny a safe haven to terrorists in their territory, as well as to ensure the apprehension or extradition of perpetrators of such acts.

23. The Committee must support the efforts of those international bodies which, by mandate and expertise, were best equipped to find answers to specific aspects of the problem of terrorism.

24. Mr. BABY (Mali) said that despite the growth of international cooperation in combating terrorism, both within the United Nations and elsewhere, the problem of terrorism remained acute in certain countries and regions and was jeopardizing the interests of the international community as a whole. Mali unequivocally condemned terrorism in all its forms and manifestations, whatever its causes and wherever it occurred.

25. His delegation felt that an international conference on terrorism would be effective only to the extent that it had the support of all States. Terrorism was such a serious problem that all countries must cooperate through preventive diplomacy to find concrete solutions so as to prevent terrorism in all its forms. Terrorism could not exist without external financing.

26. Mali was a party to the International Convention against the Taking of Hostages and the Tokyo, Hague and Montreal Conventions and had signed the Convention on the Marking of Plastic Explosives for the Purpose of Detection. It called on all States Members of the United Nations to ratify the Conventions on terrorism and implement their provisions; international

cooperation in combating and preventing terrorism would help to strengthen trust among States and improve international relations.

27. Mr. HANAFI (Egypt), said that as a first step in combating terrorism, all States should comply with international law and the Charter of the United Nations; refrain from using or threatening to use force against other States; find peaceful settlements to disputes; guarantee the legitimate right to self-determination; avoid harbouring or training terrorists or financing their activities; and bring terrorists to trial. Egypt strongly condemned terrorism, and had acceded to all international agreements on terrorism; it had also been active in initiating an international treaty, now ratified, which was designed to prevent illegal acts against shipping. It was imperative to establish an international legal system which would tighten the noose around terrorists and their sponsors. States should lend their support by acceding to and complying with existing agreements, and by ensuring that their domestic legislations were compatible with the latter. It was important to remember that peoples suffering under occupation or racist regimes should have the same rights and freedoms guaranteed to innocent civilians and that international cooperation and consensus of opinion were essential to success in combating terrorism.

28. Mr. BEJO (Albania) said the fact that the issue of international terrorism had been on the agenda of the General Assembly for so many years, and the difference of opinion on ways and means to combat international terrorism, demonstrated the complexity of the phenomenon; nevertheless, international terrorism was unquestionably condemned by the entire world community. His delegation unequivocally condemned international terrorism in all its forms and believed that there was an urgent need to develop measures to prevent and control international terrorism before it evolved into a truly global problem which would be difficult to control. It was very important to establish a legal instrument to define terrorism, which would articulate norms based on international law. Such an instrument would help to strengthen cooperation among States in combating terrorism, at the bilateral, regional and international levels, and in eliminating the underlying causes.

29. New and positive developments had occurred in international relations in recent years. The Republic of Albania welcomed the Madrid peace conference on the Middle East and believed that, despite the difficulties it faced, it reflected the desire for peace, stability and security for all peoples in the region. With enhanced individual and collective security, it would be easier, politically and legally, to agree on ways and means to combat all acts which threatened that security. His delegation hoped the logic of peace, understanding and responsibility for stability and security, and not the logic of suppression and State terrorism, would finally prevail in Yugoslavia so that all the peoples and nationalities, including the Albanians, the third biggest group in Yugoslavia, would enjoy the right to life and self-determination in accordance with all the norms of international law and the Charter of the United Nations.

(Mr. Bejo, Albania)

30. Because of the mentality of the former regime, the Republic of Albania was not yet a party to the conventions on terrorism, but it was currently preparing to accede to them as proof of its willingness to join in efforts to combat international terrorism.

31. Mr. HAHM (Republic of Korea) said that his country resolutely condemned and rejected all acts of terrorism, regardless of motivation or circumstance. It had itself fallen victim many times to the heinous violence of terrorism. It supported General Assembly resolution 44/29 and, on the question of hostages, commended Security Council resolution 579 (1985).

32. International cooperation was vital in the prevention of terrorism; it was imperative that States reinforce that cooperation through the exchange of information between Governments to prevent acts of terrorism and to apprehend, extradite if necessary and prosecute suspected perpetrators. His delegation welcomed the proposals concerning an enhancement of the role of the United Nations and the relevant specialized agencies in combating international terrorism. It also attached special importance to the faithful observance by States of their obligations under international law to prevent and fight terrorism; the Republic of Korea was a party to all relevant international legal instruments on terrorism. It appreciated the work being done by the International Maritime Organization and the International Civil Aviation Organization and had signed the Convention on the Marking of Plastic Explosives for the Purpose of Detection.

33. His delegation believed that the proposed international conference on terrorism would only prove to be useful if it received widespread support and could help to advance the eradication of international terrorism. It had serious doubts as to the efficacy of such a conference at the current stage.

34. Mr. TETU (Canada), speaking also on behalf of Australia, said that, as terrorism was not likely to diminish in intensity in the near future, more effective cooperation was needed among all the parties involved. One example of such cooperation was the conclusion in March 1991 of the Convention on the Marking of Plastic Explosives for the Purpose of Detection. Approximately 40 States, including major producers, had signed the Convention and he urged States which had not yet signed it to consider doing so. Another encouraging example concerned the regional arrangements on the issue of terrorism concluded under the auspices of the South Pacific Forum.

35. Beyond international cooperation, States must also show a commitment to fighting terrorism at the national level. For their part, Canada and Australia were parties to most of the conventions listed in document A/46/346, and both were actively considering ratification of the instruments to which they had not yet acceded. Canada and Australia were convinced that the problem of terrorism would be better addressed by implementing the existing instruments effectively rather than attempting to deal with more intractable problems such as the definition of terrorism.

(Mr. Tetu, Canada)

36. The divergent views so far expressed on the subject suggested that a conference to define terrorism or its underlying causes would open up a debate which was likely to be highly politicized and would threaten to undermine the degree of international consensus achieved up to then. For that reason, both Canada and Australia continued to believe that the holding of such a conference would be inappropriate.

37. While the Governments on whose behalf he spoke could not accept the legitimacy of any so-called right of resort to terrorism in order to achieve political objectives, they were aware that there were real causes of grievance among peoples in many parts of the world. Such grievances must not go unheard; they must be addressed by Governments and the international community in a sympathetic and realistic way, through peaceful processes and negotiations.

38. Canada and Australia reaffirmed their support for the adoption at the current session of a resolution on terrorism which would contain a balanced summary of international achievements and goals in the field, while unequivocally condemning all acts, methods and practices of terrorism.

39. Mr. ADHIKARI (Nepal) said that terrorism could not be justified under any circumstances. The taking of hostages in the name of political goals was a barbaric and inhuman act which should be condemned unequivocally by the civilized world.

40. After reviewing the history of the item in the General Assembly and the Security Council, he said that his country had already adopted five antiterrorism conventions and that the newly elected Government of Nepal was considering acceding to two others, including the Convention on the Marking of Plastic Explosives for the Purpose of Detection.

41. Nepal was a founding member of the South Asian Association for Regional Cooperation (SAARC) and had initiated measures to combat terrorism as it affected the security and the stability of the region. Drawing attention to the SAARC Convention on Supression of Terrorism, the relevant provisions of which were set forth in document A/46/346, he said that Nepal had also enacted specific laws on terrorism to give effect to the Convention.

42. His delegation was aware of the difficulties of defining terrorism. The right to self-determination and independence of all peoples under colonial and racist regimes, and the legitimacy of the struggle of national liberation movements, must be duly recognized as inalienable, since such rights were derived from natural law and were also embodied in a number of international instruments, including the Charter of the United Nations.

43. In adopting effective measures to combat terrorism, the Committee should bear in mind the following: first, terrorism should be regarded as a crime

(Mr. Adhikari, Nepal)

against international peace and security as well as a crime against mankind; secondly, States should refrain from organizing, instigating, assisting or participating in acts of civil strife or acquiescing in activities within their territory directed towards the commission of such acts; thirdly, offenders should be either extradited or prosecuted by the State in which they were apprehended; and fourthly, a strict distinction should be made between the inalienable right to self-determination and an act of international terrorism.

44. His delegation believed that the holding of an international conference to define terrorism would be inappropriate and that discussion should continue in the Sixth Committee.

45. Mr. ARAPTA MANGUSHO (Uganda) said that the views of Member States and of international organizations, as reflected in documents A/46/346 and Addendum 1, reflected an emphasis on acts of international terrorism committed against aircraft and maritime navigation. His delegation believed, however, that the significance and the consequences of international terrorism went beyond the scope of international travel. The developing countries had experienced international terrorism in many other forms.

46. The international media wittingly or unwittingly contributed to the prevalance of acts of political and economic terrorism by deliberately misinforming and exaggerating in a manner which intensified the fear, frustration and suffering of peoples in the developing world. For instance, legitimate national liberation movements had been portrayed as terrorist organizations while, on the other hand, the terrorist acts perpetrated by the apartheid regime in South Africa had been referred to as counter-insurgency. In the Middle East, where Palestinian youth, women and children had been caught up in legitimate resistance against an occupying Power in an effort to obtain self-determination, the victims had been vilified while the oppressors had been glorified.

47. Drug trafficking and its links to terrorism were a matter of serious concern to all countries. The terror which such trafficking generated had serious social and economic consequences for vulnerable groups, while the counter-terrorism which it incited, if not carefully coordinated and monitored, could have even greater negative consequences.

48. His delegation endorsed the letter and the spirit of General Assembly resolution 44/29, particularly paragraphs 4 and 6, which urged all States to cooperate with a view to eradicating international terrorism. In his view, cooperation would be greatly facilitated if States could reach a common understanding on what constituted acts of terrorism, as opposed to the legitimate struggles of peoples for national liberation.

(Mr. Arapta Mangusho, Uganda)

49. His Government was scrutinizing international conventions on the subject with a view to ratifying them in the near future and thus reinforcing the antiterrorism laws already enacted in Uganda. Nevertheless, his Government's view was that international conventions alone, unaccompanied by practical measures to remove the justifications for committing terrorist acts, could not eliminate the problem. It might perhaps be useful to resume efforts to develop a common definition of terrorism in view of the opportunity afforded by the changed international climate. Preliminary discussions on the subject could be initiated within the framework of the United Nations Decade of International Law. Such discussions could be concretized through an international conference, convened under the auspices of the United Nations, to define terrorism and to differentiate it from the struggle of peoples for national liberation.

50. Mr. Afonso (Mozambique) resumed the Chair.

51. Mr. SCHARF (United States of America) said that the most salient facts to emerge from the debate were the universal condemnation of terrorism and the universal expression of willingness to seek to cooperate with a view to its elimination. Nor did even a minority of speakers any longer seek to qualify the unconditional condemnation of terrorism as criminal and unjustifiable without regard to where or by whom such acts were committed. That consensus was a noteworthy achievement, not only because the organized international community had validated its own existence by a common response to the challenge of terrorism, but because it had been far from easy to achieve. Consensus had been reached because of the spreading recognition that terrorism was random and could strike anyone anywhere; that no State was exempt; and that no State could carry out its fundamental responsibility to safeguard its citizens without joining in the effort to combat terrorism.

52. The international community had worked together in that combat through conventions dealing with the protection of civil aviation, the protection of diplomats, the prohibition of hostage-taking and terrorist acts at sea, and most recently the convention dealing with plastic explosives, whose rapid completion was a tribute to ICAO and to the firm stance against terrorism of the international community.

53. With that array of treaties on specific forms of terrorism at its disposal, there was a need for the international community to give earnest of its intention to use them to combat terrorism by having them universally ratified. Their main thrust was the denial of safe haven to the terrorist, and for that purpose universal ratification was essential. Moreover, with so clear a global consensus condemning terrorist acts as conduct that no cause could justify, there was no longer any justification for States not becoming party to the conventions.

54. The question of new conventions on the suppression of terrorism with the use of nuclear weapons and on the physical protection of chemical and

(Mr. Scharf, United States)

biological material was both important and complex. In view of the importance of the question, his delegation thanked the Soviet Union for bringing it to the attention of the General Assembly; because of its complexity, Governments should be given the opportunity to reflect on it, and other interesting suggestions, before deciding what areas to concentrate on.

55. With respect to a conference to be convened to define terrorism and to differentiate it from the struggle for self-determination, such an exercise should not be undertaken unless it was supported by a consensus, and no such consensus had emerged. His delegation took the view that such a conference was neither necessary nor useful. The difficulty of an abstract definition of terrorism was as a practical matter insurmountable; any effort to formulate such a definition would only succeed in distracting attention from the concrete achievements that were attainable. Neither was it necessary to define terrorism in order to safeguard basic human rights, including the right to self-determination. The United States spoke as a nation that had fought for its independence and had aided others in their struggle to achieve self-determination. That did not mean, however, that there were no limits to permissible methods. No cause could justify the random violence of interference with civil aviation, attacks on diplomats, hostage-taking, or the use of plastic explosives. The international community had long accepted the notion that there were acts so heinous that States might not resort to them in the exercise of their right to self-defence no matter how dire their situation, so it was not surprising that there were similar inhumane acts that groups and individuals might not engage in no matter how just their cause.

56. It was unnecessary to denominate State conduct as terrorism in order to establish its illegality, as a solid body of law already existed. His delegation could not imagine any State conduct that could reasonably be called terrorism that was not already a violation of law. State support of terrorist acts by individuals and groups was a clear violation of Article 2, paragraph 4, of the Charter. It was not necessary or desirable, then, to apply the term to common crimes pursued for private gain since all societies already had an adequate legal framework for dealing with such conduct. The term "terrorism" was, however, of enormous utility when applied to acts of violence of a particularly heinous nature, committed by individuals or groups, that were more than common crimes for private gain but less than action by a State. For those reasons, his delegation did not believe a definition was either necessary or useful.

57. With respect to the causes of terrorism, it was undeniable that all the injustice in the world, imagined or real, had not been eliminated. A very substantial number of the 150-odd items on the agenda of the forty-sixth session of the General Assembly were devoted to eliminating injustice of one sort of another. It was hardly reasonable for the Sixth Committee to distract itself from concrete measures to control the problem by attempting to grapple with eliminating causes when such matters were being considered elsewhere in the Assembly. In sum, his delegation applauded the measures taken since the adoption of resolution 44/29 to expand the conventions dealing with specific

(Mr. Scharf, United States)

terrorist acts, and the increased ratifications of the outstanding conventions, and was confident that the General Assembly would once again declare its condemnation of terrorism without exception, qualification or reservation of any kind.

58. Mr. RAOELINA (Madagascar) said that for more than two decades, the Sixth Committee had been dealing with the question of international terrorism, but despite the adoption of the various conventions, terrorist acts were still being perpetrated throughout the world and no country was immune.

59. Madagascar unequivocally condemned terrorism, and those States that organized, financed or encouraged terrorism. That position was reflected in the substantive measures his Government had undertaken both nationally and internationally. Madagascar was a party to all the conventions on the security of international civil aviation, and welcomed all resolutions adopted by the General Assembly and the Security Council on hostage-taking and kidnapping.

60. As the increase in the number of terrorist incidents was of deep concern to the international community, the General Assembly and the Sixth Committee should take a decision on the matter by consensus. All delegations, while firmly rejecting terrorism, should seek to determine its underlying causes.

61. During the current debate, some representatives had expressed doubts as to the chances for success of an international conference on the definition of terrorism. Others had even claimed that the new status of wars of national liberation could legitimize terrorism. However, by its resolution 42/159, the General Assembly had confirmed the legitimacy of the struggle of all peoples living under racist or colonial regimes, in accordance with the purposes and principles of the Charter and the principles of international law. Any attempt to equate that struggle with terrorism was therefore incompatible with United Nations purposes, principles, and resolutions.

62. He drew attention to the fact that the ninth summit conference of heads of state and government of the non-aligned countries had adopted a declaration condemning all acts of terrorism, whether committed by individuals, States or groups of States, and expressing the determination of the signatory countries to put an end to such acts by any legal means possible, while at the same time reaffirming the right of peoples to self-determination and the legitimacy of the struggle for independence. The fight against terrorism could be advanced by formulating a definition acceptable to all delegations, and so the non-aligned countries had indicated in their declaration that they favoured the convening under the auspices of the United Nations of an international conference to define terrorism and differentiate it from the struggle of peoples for national liberation.

63. Ms. FEARNLEY (New Zealand) said that her Government, like the Governments of many other Member States, firmly maintained that no cause, however just, and no goal, however worthy, could justify the taking or endangering of innocent lives.

64. International terrorism was a global concern which needed to be addressed through concerted international action. In the past, the international community had shown the capacity to respond appropriately to activities which threatened the international order. During the past two decades, in particular, significant legal instruments addressing various aspects of terrorism had been concluded. Her country was a party to most of those conventions and was considering ratifying others.

65. While the existing instruments did not fully meet the aspiration voiced by the General Assembly in 1972 for an overall approach which would address all acts of international terrorism, they demonstrated that steps could be taken and implemented without requiring a comprehensive definition of terrorism. It was clear from the debate so far that no consensus existed on such an approach.

66. Accordingly, New Zealand believed that, for the time being, the international community should give first priority to the adoption of appropriate domestic measures, and to concerted action at both the global and the regional levels, in order to strengthen the effectiveness of the measures already in place. Regional arrangements, such as those coordinated by the South Pacific Forum since the mid-1980s, could contribute significantly to the international fight against terrorism.

67. In view of the threat posed by terrorism to the security of States and their citizens, her country believed that it was incumbent on the Committee to adopt by consensus a resolution reaffirming its unequivocal condemnation of all forms of terrorism.

68. Mr. JERKIC (Yugoslavia), speaking in exercise of the right of reply, referred to an earlier statement by the representative of Albania in which the latter had accused Yugoslavia of engaging in State terrorism. He had no wish to enter into useless recriminations, but said that Yugoslavia rejected utterly those preposterous allegations. That had not been the first time in the forty-sixth session of the General Assembly that the delegation of Albania had launched unfounded attacks on Yugoslavia. He was surprised by those attacks, as they were diametrically opposed to Albania's publicly stated policy towards Yugoslavia. Regardless of the difficulty Yugoslavia had recently encountered, the conduct of Albania during the session had been, to say the least, scarcely conducive to good-neighbourliness.

The meeting rose at 5.40 p.m.

UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
18th meeting
held on
Tuesday, 22 October 1991
at 10 a.m.
New York

SUMMARY RECORD OF THE 18th MEETING

Chairman: Mr. AFONSO (Mozambique)

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AGENDA ITEM 140: EXPLOITATION OF THE ENVIRONMENT AS A WEAPON IN TIMES OF ARMED CONFLICT AND THE TAKING OF PRACTICAL MEASURES TO PREVENT SUCH EXPLOITATION

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6 November 1991
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The meeting was called to order at 10.05 a.m.

1. The CHAIRMAN called attention to the fact that, in accordance with its programme of work, the Committee would take up the Secretary-General's report on possible ways of assisting developing countries to attend UNCITRAL meetings at the morning meeting on Friday, 25 October. He urged delegations wishing to take part in the debate to place their names on the list of speakers as soon as possible.

AGENDA ITEM 140: EXPLOITATION OF THE ENVIRONMENT AS A WEAPON IN TIMES OF ARMED CONFLICT AND THE TAKING OF PRACTICAL MEASURES TO PREVENT SUCH EXPLOITATION (A/46/141 and A/46/358-S/22931)

2. Mr. SALAH (Jordan), introducing the item, said that the unanimity with which it had been accepted by the General Committee reflected the enhanced awareness of the international community when it came to questions of environmental protection. It was pertinent to recall certain characteristics that gave the matter a shared sense of urgency. First, the irreversibility of harm to the environment called for the strengthening of preventive factors and the adoption of new measures to minimize environmental damage before it occurred. Secondly, environmental damage in one part of the globe, if of a certain magnitude, would have implications in far distant and unexpected places and under the most unexpected circumstances, sometimes with devastating effects. It would therefore be short-sighted to believe that anyone could be immune. Both characteristics called for a concerted response on the part of the United Nations and, more specifically, the Sixth Committee.

3. The agenda item did not deal with environmental protection in general - that would duplicate to some extent work being done elsewhere - but only with the protection of the environment in armed conflicts. The catalyst for the inclusion of the item in the agenda had been the Gulf conflict. Therefore, the topic fell at the meeting place between environmental law and humanitarian law.

4. In proposing the inclusion of the item in the agenda, it had not been Jordan's intention that the Gulf war should be refought in the Sixth Committee. The item should not serve as a pretext for seeking to apportion blame or to write history. The purpose was to draw lessons from the excesses committed during that conflict so as to prevent a repetition in the future, and in so doing to help ensure a safer world for everyone.

5. It was sometimes argued that armed conflict was of an exceptional nature, the damage inflicted being required to achieve the purposes of the combatants, and was hence not amenable to treatment within an environmental context. His delegation believed such arguments to be grossly misconceived. First, it was obvious that armed conflict caused damage in the environment of non-combatants and that, from that point of view, the exceptional nature of armed conflict - if it existed - and the righteousness of causes were simply immaterial.

(Mr. Salah, Jordan)

Moreover, such arguments did not take into account the customary and conventional restraints on the waging of armed conflicts and flew in the face of more than 100 years of attempts to limit the right to wage war.

6. Humanitarian law and environmental law had in common the absence of absolute obligations, in the former due to the presence of the doctrine of military necessity, and in the latter due to the need to balance competing rights. Hence, it should not be too difficult structurally to introduce environmental concerns into humanitarian law applicable in armed conflicts.

7. His delegation was not unaware that other delegations had been motivated by the same concerns. Indeed, the Government of Canada had hosted a conference of experts at Ottawa on the use of the environment as a tool of conventional war, held from 9 to 12 July 1991. Although his delegation did not totally share the conclusions of the Chairman of that conference, it viewed the conference as an important step towards greater environmental protection.

8. He expressed his delegation's gratitude both to the Government of Canada for hosting the Conference and to the organizers of the London Conference on a "fifth Geneva Convention" on the protection of the environment in time of armed conflict. The London Conference, being a non-governmental meeting, had had a chance to look at some detailed substantive provisions relating to environmental protection in armed conflict. Again, while his delegation might not agree with all the conclusions of the Conference, the attempt to address such a highly topical subject deserved gratitude.

9. His delegation, which was prepared to listen attentively to all points of view, was particularly aware of the useful role that the International Committee of the Red Cross had played in the codification and progressive development of humanitarian law. At the end of November Budapest would host the twenty-sixth International Conference of the Red Cross and Red Crescent which, he understood, would deal with areas identical to those covered by item 140. His delegation hoped, therefore, that appropriate formulas could be found whereby the Committee could take cognizance of the results of that conference before proceeding with consideration of the item, and, notwithstanding its urgency, his delegation was ready to accept a procedural resolution calling upon the Secretary-General to ask Governments and international organizations for their views, as was customary. The resolution should also establish a link with the Budapest Conference, so that the results of the Conference might be awaited and duplication avoided.

10. Lastly, he was not unaware that the title proposed for the item, concentrating as it did on the exploitation of the environment, might give the impression that what was meant was an environmental modification treaty, whereas what his delegation hoped for was greater environmental protection, in general, in time of armed conflict. Therefore, it would not oppose a change in the title of the item to "Protection of the environment in armed conflict".

11. Mr. KIRSCH (Canada) said that the environmental depredation carried out by Iraq by releasing oil into the Gulf and by destroying numerous Kuwaiti oil wells had focused world attention on the difficult and delicate topic currently before the Committee. What Iraq had done was clearly illegal, as had been affirmed by the relevant Security Council resolutions and shown by the fact that a mechanism had been put in place to obtain compensation for the damage done and the clean-up involved.

12. The issue being addressed by the Committee was whether those actions were specifically illegal under the laws of armed conflict besides being part of an illegal aggression against Kuwait. His delegation took the position that actions of that type were indeed contrary to customary international law, which was binding on all States, and would like to see that point reflected in any resolution that might emerge from the discussion of item 140.

13. An important conclusion reached at the international conference of experts held at Ottawa was that the customary laws of war, in reflecting the dictates of public conscience, now included a requirement to avoid unnecessary damage to the environment. That key conclusion was based on the so-called "Marten's Clause" contained in the preamble of the 1899 and 1907 Hague Conventions, which provided that inhabitants and belligerents remained under the protection and the rule of the principles of the law of nations, as they resulted from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

14. In effect, the practice of States, generally accepted environmental principles and public consciousness about the environment had combined with the traditional armed conflict rules on the protection of civilians and their property to produce a customary rule of armed conflict prohibiting the infliction of unnecessary damage on the environment in wartime.

15. The matter was expected to be considered in a substantive manner at the twenty-sixth International Conference of the Red Cross and Red Crescent, to be held at Budapest from 26 November to 6 December and it was hoped that amendments or additions to military manuals would be suggested. That would mark a transition from the realm of general discussion to the practical world of rules of conduct for military commanders during armed conflict.

16. Since the Budapest Conference was expected to address the topic in detail and had traditionally served as the forum for dealing with the law of armed conflict, it would appear sensible to refer directly to the Conference in any resolution adopted by the Sixth Committee and await the outcome of the Conference before embarking on a programme of work on the topic.

17. His delegation was well aware of the years of work and the resources required for the negotiation of the legal instruments elaborated on the environment and armed conflict, which represented a somewhat fine balance between competing interests and views. A clear picture of the desired objective and the chances of success would be necessary before embarking on an

(Mr. Kirsch, Canada)

exercise to amend the scope of those instruments or create new ones. His delegation would prefer to take stock of the current situation with regard to the question in order to ensure that any efforts made would be proportionate to the potential practical results and the views of Members of the United Nations must be solicited to that end.

18. Lastly, the need to implement the instruments in force more effectively through an increase in the number of States parties to existing agreements and conventions and better use of the mechanisms for which they provided should be reflected in any resolution adopted on the item.

19. Mr. MARTINEZ GONDRA (Argentina) welcomed the inclusion in the agenda of the item proposed by Jordan and said that the recent conflict in the Gulf had had serious environmental consequences, especially the massive and deliberate oil spills into the sea and the burning of oil wells. Such acts were a clear-cut example of the hostile use of environmental modification techniques prohibited by the 1977 Convention, which, as indicated by Jordan in its explanatory memorandum (A/46/141) was "painfully inadequate".

20. The effects of the conflict had reopened questions about international agreements and conventions designed to avoid the exploitation of the environment as a means of indiscriminate destruction in wartime and the infliction of serious damage to the population and its health.

21. The question of the use of environmental techniques for military purposes had not been sufficiently debated during the United Nations Conference on the Human Environment (Stockholm, 1972). Moreover, not many international agreements contained provisions on the protection of the environment in the event of armed conflict. Some allusions were made to it in the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (London, 1972); Protocol I to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts (1977); and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (1977).

22. The Convention on environmental techniques, which had entered into force in 1978 and to which the Argentine Republic was a party, tolerated the hostile use of environmental modification techniques provided that they did not have "wide spread, long-lasting or severe effects" (art. I). Rather than banning so-called "environmental warfare" completely, it had seemed preferable to ban it on a qualified or limited basis. The Convention also provided for consultation and cooperation procedures (art. V), and procedures for investigations and fact-finding, which had not yet been made use of; it contained provisions concerning its amendment (art. VI) and on review of its operation (art. VIII), of which the parties had likewise made no use. While the Convention was a valuable reference for the debates of the Sixth Committee, questions concerning review of its operation and amendment should be left to the parties themselves.

(Mr. Martinez Gondra, Argentina)

23. The consequences of the Gulf war, however, could serve to clarify and aid the analysis of, inter alia, the implementation of the rules of customary and treaty law on environmental protection, together with other rules applicable to armed conflict. The advisability and feasibility of reorganizing and, when necessary, updating rules on environmental protection in time of armed conflict could also be assessed.

24. The views of Governments should be sought on the item under consideration and the item should be included in the agenda for the forty-seventh session of the General Assembly, either under its current title or another which would embrace all the various positions.

25. Mr. YENGEJEH (Islamic Republic of Iran) referred to the environmental disaster which had resulted from the Persian Gulf crisis and said that its vast ecological dimensions necessitated international cooperation to facilitate the elimination of its adverse effects on the environment and take the necessary steps to prevent its recurrence in the future. The report of the Secretary-General of the United Nations Conference on Environment and Development (A/CONF.151/PC/72), dated 15 July 1991 and the declaration by the conference of the Regional Organization for the Protection of the Marine Environment, recently held in Kuwait, testified to the magnitude of the environmental and economic damage caused by that disaster.

26. After a decade of suffering from the effects of war, Iran had ample reason to offer its support and cooperation to regional, international and inter-agency projects designed to accelerate the elimination of current environmental pollution. Accordingly, he wished to express his delegation's appreciation to individuals, Governments and international organizations for their efforts in organizing meetings on the subject, such as those held in Ottawa and London.

27. The Jordanian proposal, which was commendable, stressed that there were two categories of law on the protection of the environment - environmental law, aimed at protecting the environment in general, and the law of armed conflict, which sought to prevent unnecessary damage to the environment. Referring to the law of armed conflict, he said that both customary law and treaty law prohibited belligerent parties from inflicting either direct or indirect damage on the environment.

28. The principle of proportionality, which was enshrined in customary law, set important limits on warfare whereby damage not necessary to the achievement of a definite military advantage was prohibited. Another principle of customary law, whereby military operations not directed against military targets were prohibited, had been incorporated in the preamble to the 1868 Declaration of St. Petersburg to the effect of prohibiting the use of certain practices in wartime and in article 35.1 of Protocol I (1977) additional to the Geneva Conventions. Lastly, The Hague Regulations concerning the Laws and Customs of War on Land prohibited the destruction of

(Mr. Yengejeh, Islamic Republic of Iran)

non-military enemy property unless imperatively demanded by the necessities of war. Moreover, under treaty law, parties to an armed conflict were obligated to protect the environment in time of war. The majority of countries were parties to the Geneva Conventions of 1949 and were obligated to comply with them in an international conflict. The Fourth Geneva Convention contained two provisions intended to ensure indirect protection of the environment in the context of protecting property rights in occupied territories. Thus, for example, an occupying Power which destroyed industrial installations in an occupied territory, causing damage to the environment, would be in violation of the Fourth Geneva Convention unless such destruction was justified by military necessity. If such destruction was extensive, it constituted a grave breach of the Convention and even a war crime.

29. He cited various provisions of Additional Protocol I (1977) to the Geneva Conventions which related to the protection of the environment and led to the conclusion that that instrument clearly prohibited attacks on the environment and the use of the environment as a tool of warfare. In addition to those, there were other instruments which were indirectly related to the protection of the environment, including the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. The International Law Commission, for its part, had completed the first reading of the Draft Code of Crimes Against the Peace and Security of Mankind.

30. Turning to the law on the protection of the environment, he pointed out that the general principles of customary international law clearly contained specific rules on the protection of the environment. One such rule was the obligation of States not to damage or endanger the environment beyond their jurisdiction, a rule which had been enshrined in numerous international and regional agreements.

31. With regard to the application of environmental law in time of war, he said that the relationship between a party to the conflict and a neutral State was essentially governed by the law in time of peace and, consequently, belligerent parties had an obligation to respect environmental law vis-à-vis non-belligerent States. There was no universally accepted rule concerning the application of international law on the protection of the environment to belligerent parties, and some argued that the relationship was governed by the law of armed conflict, which meant that with the outbreak of war, the application of rules on the protection of the environment was suspended. However, others argued that in such cases, under treaty law and customary law international legal rules protecting the environment were neither suspended or terminated, since the law of armed conflict itself tended to protect the environment in time of war.

32. For those reasons, his delegation was convinced that there were well-established rules of both customary and treaty law which held a party to

(Mr. Yengejeh, Islamic Republic of Iran)

a conflict responsible for unnecessary damage to the environment, and it believed that it was on the basis of those rules that the Security Council had decided in paragraph 16 of resolution 687 (1991) that Iraq was "liable under international law for any direct loss [or] damage, including environmental damage and the depletion of natural resources".

33. The Organization should concentrate its efforts on persuading States parties to ratify the existing instruments on the protection of the environment and encourage them to abide by their obligations under international law. Perhaps it would be a positive step if the United Nations elaborated a provision to the effect that the norms governing the protection of the environment were neither suspended nor terminated in time of war, as that would leave no doubt as to the applicability of environmental law in time of war. The task could be entrusted to the legal working group of the United Nations Conference on Environment and Development and the provision subsequently could be incorporated in the Earth Charter to be adopted at the Conference.

34. Mr. ROSENSTOCK (United States of America) said that the item under consideration probably would not be on the agenda were it not for the fact that 10 months earlier Iraq had deliberately exploded more than 700 oil wells in Kuwait and released over 1 million tons of crude oil into the Persian Gulf. The oil spills were likely to disrupt the Gulf ecosystem in immeasurable ways for years to come, and the toxic effects of the oil well fires could not be compared with any previous man-made environmental disaster. It was not a matter of apportioning blame but of recognizing the unique nature, from a legal point of view, of the acts carried out by Iraq.

35. The environmental carnage wrought by Iraq had understandably generated deep international concern. His country, which had worked actively along with many others to help Kuwait assess and contain the oil spills and respond to the devastating environmental and health consequences of the oil well fires, fully shared the international community's indignation at Iraq's actions.

36. In the face of Iraq's wanton environmental destruction, there were those who favoured the drafting of new international rules to protect the environment in time of war. The problem, however, was not that the existing international law did not cover actions such as those perpetrated by Iraq, for Security Council resolution 687 (1991) had made it clear that the actions by Iraq had been a clear violation of existing international law.

37. The deliberate release of oil into the Gulf and the burning of Kuwaiti oil wells had constituted a serious violation of the prohibition of the destruction of property unless required by military necessity contained in the Fourth Geneva Convention and the Regulations annexed to The Hague Convention concerning the Laws and Customs of War on Land (1907). Those acts had also been a violation of the prohibitions under customary international law against

(Mr. Rosenstock, United States)

any military operation which was not directed against a legitimate military target or which could be expected to cause incidental death, injury or damage to civilians that was clearly excessive in relation to the direct military advantage of the operation. In the situation under consideration, the oil well destruction had taken place at a time when it had been clear to Iraq that the war had ended. Those actions obviously had other objectives: for example, to injure the population of other States in the region, to take revenge on the people of Kuwait and perhaps to demonstrate in the most graphic way the ruthlessness of the Iraqi regime in pursuit of its objectives. It was impossible to imagine conduct more contrary to the very idea of human rights in armed conflict.

38. Those violations of international law had definite legal consequences, as the Fourth Geneva Convention of 1949 acknowledged in stipulating that the destruction of property not justified by military necessity was a grave breach and that persons committing such breaches incurred criminal liability. Moreover, the Charter of the International Military Tribunal stipulated that "plunder of public or private property" and "devastation not justified by military necessity" were war crimes.

39. Further, under Security Council resolution 687 (1991), Iraq was financially liable for the environmental damage it had caused. Thus, existing international law not only prohibited the type of acts committed by Iraq, but also provided important remedies to address and deter such acts, in particular with respect to personal criminal liability and official financial liability.

40. In the view of his delegation, Iraq's actions did not demonstrate that existing international law was inadequate, but, rather, that the problem involved compliance with existing law, and no new rules or conventions were needed.

41. There had been no proposals for new rules which took into account the need to maintain the careful balance between limitations on "means and methods" of warfare and preservation of national self-defence interests under Article 51 of the United Nations Charter. Rather, countries should disseminate knowledge of the existing rules as broadly as possible and as a first step, the requirements of existing international law must be fully incorporated in military manuals and military authorities must be sufficiently instructed in their application.

42. To the extent that there was a desire to propose new rules, to refine and codify existing rules, or to enhance compliance, there was an appropriate forum for that. Those issues would be fully addressed at the twenty-sixth International Conference of the Red Cross and Red Crescent, held in November 1991 at Budapest, which would consider a detailed report on the issue of protection of the environment in time of war. His delegation was confident that the Red Cross Conference would produce a document that would address all the questions about which delegations in the Sixth Committee were concerned.

(Mr. Rosenstock, United States)

It considered the Red Cross Conference the most appropriate body for an initial substantive consideration of the issue as it would provide a basis for determining what further work was necessary and in what forum.

43. The environmental catastrophe that had resulted from Iraq's actions of January 1991, which should not escape denunciation as a flagrant violation of the law, showed that efforts to ensure compliance with existing international law applicable to the protection of the environment in time of armed conflict must be intensified. To that end, the report of the Red Cross Conference would significantly enhance the ability of all Governments to decide what further action by the General Assembly was needed.

44. Mr. KORODI (Observer for the International Committee of the Red Cross) said that his organization was extremely preoccupied by the advent of increasingly destructive means of warfare, which constituted a serious threat to the environment. There was reason to fear that the use of such means could wreak such large-scale destruction as to render illusory the protection afforded civilians under international humanitarian law. Severe environmental damage could in fact seriously hamper or even prevent the implementation of provisions to protect the victims of armed conflicts.

45. The International Committee of the Red Cross (ICRC) had begun showing concern for the protection of the environment in time of armed conflict in the early 1970s and had played a very active role in introducing rules protecting the environment in international humanitarian law.

46. In the wake of the Middle East crisis, in 1990 and 1991, many questions had been raised about the content, scope and possible shortcomings of those rules, which had been discussed at several meetings of experts in which ICRC was invited to participate and also in the Preparatory Committee for the United Nations Conference on Environment and Development. Those meetings had not reached any final conclusions because, among other reasons, it had not been possible to make a scientific assessment of the environmental damage caused by modern warfare or a thorough analysis of the content and limitations of the rules in force. It was therefore necessary to continue those efforts and, in that connection, ICRC was grateful to be able to take part in the discussions of the Sixth Committee.

47. The questions ICRC intended to bring up on protection of the environment in time of armed conflict would be developed at greater length during the twenty-sixth International Conference of the Red Cross and Red Crescent, to be held in December 1991 at Budapest.

48. With respect to the law applicable to protection of the environment in time of armed conflict, ICRC was convinced that despite certain lacunae and imperfections, the existing provisions constituted a solid basis.

(Mr. Korodi)

49. The most important general principle of relevant humanitarian law, according to which the right of the parties to the conflict to choose methods or means of warfare was not unlimited, had first been set forth in the Declaration of St. Peterburg in 1868 and had been frequently reiterated in international humanitarian law treaties, most recently in Protocol I of 1977 additional to the Geneva Conventions. Like the rule of proportionality, it clearly applied to protection of the environment in wartime.

50. In addition to those principles, several treaties contributed to the protection of the environment in wartime, although they contained no specific provisions to that effect. Among them were the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare, the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, and the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. Lastly, two recent treaties should be mentioned: the 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques and Protocol I of 1977 additional to the Geneva Conventions of 1949. Both instruments were of major importance and most relevant, since they included specific provisions on environmental protection, such as article 1 of the 1976 Convention and articles 35 and 55 of the 1977 Protocol.

51. After describing briefly the provisions of those instruments, he observed that if they were correctly applied the rules of international humanitarian law in force could considerably limit environmental damage in warfare. A special effort must therefore be made to ensure that the relevant treaties, which were binding international law, were acceded to or ratified by as many States as possible. To date, Protocols I and II had been accepted by 105 and 95 States respectively.

52. With respect to substantive measures for the implementation of international humanitarian law, one could mention in particular the International Fact-finding Commission provided for by article 90 of Protocol I of 1977 and constituted on 25 June 1991. The dissemination of the applicable rules likewise contributed to their respect.

53. For its part, ICRC was of the opinion that, while it seemed unnecessary to revise international humanitarian law for the protection of the environment, certain issues deserved detailed study, for instance: a concerted interpretation of what constituted "widespread, long-term and severe damage" to the environment and protection of the environment in time of non-international armed conflict.

54. One of the tasks of ICRC was to work for the understanding and dissemination of international humanitarian law applicable in armed conflicts. In pursuance of that mandate, ICRC was ready to convene a group of

(Mr. Korodi)

experts to examine the international rules for the protection of the environment in time of armed conflict and to make proposals in that respect. ICRC had already taken initiatives of that kind, which lay at the origin of most of the current rules of international law, such as the four Geneva Conventions, their two additional Protocols, and the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons.

55. ICRC hoped that the projected common efforts would have positive results and would thereby contribute to effectively protecting the natural environment as well as victims of armed conflicts.

The meeting rose at 11.20 a.m.

UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
19th meeting
held on
Wednesday, 23 October 1991
at 10 a.m.
New York

SUMMARY RECORD OF THE 19th MEETING

Chairman: Mr. AFONSO (Mozambique)

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AGENDA ITEM 140: EXPLOITATION OF THE ENVIRONMENT AS A WEAPON IN TIMES OF ARMED CONFLICT AND THE TAKING OF PRACTICAL MEASURES TO PREVENT SUCH EXPLOITATION (continued)

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The meeting was called to order at 10.05 a.m.

AGENDA ITEM 140: EXPLOITATION OF THE ENVIRONMENT AS A WEAPON IN TIMES OF ARMED CONFLICT AND THE TAKING OF PRACTICAL MEASURES TO PREVENT SUCH EXPLOITATION (continued) (A/46/141, A/46/358-S/22931)

1. Mr. WINKLER (Austria) said that at its sixteenth session, held in May 1991 at Nairobi, the Governing Council of the United Nations Environment Programme (UNEP) had adopted a decision on the environmental effects of warfare on the basis of a joint initiative undertaken by Austria and other countries. That decision reflected the concern of States about the devastating effects of the Gulf conflict on the environment of all States in the region and on Kuwait in particular. He therefore expressed appreciation to the Jordanian delegation for the proposal to include the item in the agenda and hoped that at the current session of the General Assembly there would be a thorough consideration of the manifold and complex aspects of the issue.

2. The progressive development of international law and its codification was not a goal in itself. At a time when there was a growing awareness that the rule of law and respect for the norms and principles of international law constituted the foundation of the international community, it had become clear that international law-making was needed to react to events in order to prevent their recurrence or at least substantially mitigate their effects. In that respect, the large-scale damage inflicted on the environment by Iraq in the course of the Gulf conflict underlined the importance for the international community of going beyond mere declarations or condemnations and working to confirm existing rules of international law and elaborate a new legal framework which would be conducive to respect for the law and would prevent such damage to the environment ever being inflicted again.

3. Ever since the deliberate acts of environmental destruction in the Gulf conflict, scholars and international legal and environmental institutions had begun a stock-taking of existing rules of international law in the field of humanitarian law in times of armed conflict and deliberations on ways to further improve and complement the existing legal framework in that field. The United Nations should now embark on a study of those problems and the appropriate forum for that discussion was the Sixth Committee.

4. The fact that not all members of the international community respected the rule of law in international relations should in no way detract from the importance of a thorough study of the matter. In the long run, the efforts made would contribute to an enhanced awareness by all Governments of the fundamental importance of scrupulous respect for international law.

5. Events in the Gulf conflict had brought to light a whole range of questions on how the legal institutions and mechanisms at the disposal of the international community could be used against a blatant breach of the most fundamental rules of law. The unanimous reaction of the international community to the act of aggression committed by Iraq had allowed the competent

(Mr. Winkler, Austria)

organs of the United Nations to take the measures provided for in the Charter to respond adequately to that breach of international peace and security. But while there could be no doubt whatsoever that those deliberate acts of environmental destruction flagrantly violated existing international law and could not, even in the most remote sense, be justified by military necessity, those events had demonstrated that international law was not sufficiently equipped to deal with the consequences of those acts, since there were no precise legal rules for assessing the damage done or for taking judicial steps against those responsible for such damage. In the view of his delegation, the provisions concerning environmental protection in the Protocols Additional to the Geneva Conventions and in the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, as well as the applicable norms of customary international law, were inadequate to deal with all aspects of environmental destruction caused by setting fire to oil wells in Kuwait and deliberately spilling crude oil into the Gulf. After referring to the various provisions in existing international law on the subject, he commended the exposé delivered on the previous day by the representative of the Islamic Republic of Iran and said that there could be no doubt as to the illegality of the acts committed by Iraq, entailing international responsibility of that State as well as personal criminal liability of those responsible for those acts. In addition to the prohibitive provisions of international law already mentioned, the Geneva Conventions and additional Protocol I specifically prohibited any act whose sole purpose was to spread terror among the civilian population, and the deliberate destruction of the environment in the Gulf region fell within that category.

6. The problems raised in connection with the item were manifold and very complex indeed and no hasty conclusions should be drawn. However, the complexity of the matter should not be a deterrent to seriously and objectively studying the issues involved, and taking appropriate action in order to arrive at an effective regime for the protection of the environment.

7. The issue of the protection of the environment in times of armed conflict was also being discussed in other forums, such as the 26th International Conference of the Red Cross and Red Crescent, which was due to take place the following month at Budapest. Those deliberations would undoubtedly produce substantial results and guidance for the work of the United Nations in that field. It would not be appropriate, however, to leave the adoption of all further steps entirely to other forums and bodies. In his delegation's view, any further consideration of the subject by the United Nations should take into account the results of the Conference of the Red Cross and the views of Governments on the measures that should be adopted. His delegation would therefore support a resolution on the agenda item which would clearly state the illegality, under international law, of the destructive acts committed by Iraq in the course of the Gulf conflict and would invite Governments to submit their views on the procedural and substantive aspects of the item. In light of those views, the Sixth Committee should continue at the following session of the General Assembly its study of the most appropriate ways and means of achieving the goal of an international legal framework to deal with the

(Mr. Winkler, Austria)

deliberate destruction of the environment in the course of armed conflicts. It would be premature, at the current stage, to speculate on the possible outcome of the study to be undertaken by the members of the Committee. His delegation would keep an open mind with regard to all possible solutions, including the elaboration of an appropriate new legal instrument, should the general view prevail that the existing rules of international law were not sufficient to deal with all aspects of the problem, .

8. Mr. LIU (China) said that agenda item 140 touched on the issue of environmental protection, which was one of common concern to the international community and which his Government regarded as part of a peaceful, stable, just and equitable new international order.

9. With regard to the protection of the environment in times of armed conflict, humanitarianism had imposed constraints on the modification of the environment long before that issue had become one of common concern to mankind. The Hague Conventions of 1899 and 1907, and the Geneva Protocol of 1925 for the prohibition of chemical and bacteriological methods of warfare contained regulations on that subject. Other Conventions, such as the Convention on the Protection of the World Cultural and Natural Heritage of 1972, and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques were also relevant to the subject. His delegation had noted that the International Conference of the Red Cross and Red Crescent, to be held in late November 1991 at Budapest, would consider the question of environmental protection in times of armed conflict, and that the work of the Preparatory Committee for the United Nations Conference on Environment and Development also covered the subject. In addition, the Canadian Government and the Secretary-General had jointly sponsored an expert meeting at Ottawa on the use of the environment as a tool for conventional warfare, while a meeting had been held in London to explore the possibility of formulating the so-called fifth Geneva Convention. All of that indicated that the subject was receiving increasing attention from the world community.

10. The question of environmental protection in times of armed conflict was related to both international environmental law and international humanitarian law. Conservation of the environment and protection of the earth were crucial to the conditions for the survival of mankind. The solution to the problem required not only the active and concerted efforts of all countries, but also the necessary restraint by mankind on its activities. Since the end of the Second World War, international humanitarian law had developed considerably, and, since the United Nations Conference on the Human Environment, in 1972, the world community had made unremitting efforts to formulate a series of international instruments relating to the protection of the common environment on land, at sea and in the atmosphere. International environmental law was becoming an important area for the progressive development and codification of international law. With respect to the question of environmental protection in times of armed conflict, although relevant provisions had been incorporated in some international treaties, those provisions needed to be further improved

(Mr. Liu, China)

in order to make them more systematic, comprehensive and capable of implementation. The question of whether it was necessary to undertake that task at the current stage and of when to begin work was a complicated one that required further study.

11. Lastly, his delegation agreed that at its current session the General Assembly should request the Secretary-General to solicit the views of Member States on the matter. His delegation hoped that, through timely consultations among all delegations, a consensus resolution could be adopted.

12. Mr. CHEANUX-REPOND (Observer for Switzerland) said that, while the announcement by the two super-Powers that they would significantly reduce their nuclear arsenals went a long way towards removing the danger that loomed over the survival of the planet, the experience of the Gulf war had demonstrated clearly the extent to which the earth and its fragile ecosystem could be threatened by a conventional armed conflict with catastrophic consequences. For that reason, he wished to thank the delegation of Jordan for bringing before the General Assembly the problem of the environment and armed conflict.

13. The tragic experience of the Gulf war showed that such a catastrophe should not and probably would not occur again if there was universal participation in the international conventions governing the subject and if all the parties to a military conflict scrupulously observed their provisions. That was why Switzerland had always attached particular importance to international humanitarian law and, as the depository of the four Geneva Conventions of 1949 and of the two additional Protocols of 1977, it again urged those States that had not yet done so to become parties to those instruments.

14. The use of the environment as an instrument for military purposes was merely one aspect of the problem of protecting the environment in times of armed conflict. Generally speaking, the applicable humanitarian law sought to protect the environment as a possible victim of the methods or weapons of war. The current case was different in that the environment had not been the primary objective nor the object of a military attack. On the contrary, it had itself been the weapon of attack. Nevertheless, the difference was only apparent because it was always man who misused the environment for military purposes. In other words, the problem would always have to be examined from the point of view of the protection of the environment.

15. The provisions of additional Protocol I to the Geneva Conventions prohibiting the use of methods or means of warfare which were intended or might be expected to cause widespread, long-term and severe damage to the natural environment should be interpreted broadly so as to include, inter alia, the deliberate misuse of the environment for military purposes. That had seemed to be the intention of the States which had participated in the elaboration of additional Protocol I, and a similar prohibition was

(Mr. Cheanux-Repond, Observer, Switzerland)

contained in the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, to which his country was also a party. However, it was not enough to note with satisfaction that there were already international Conventions for the protection of the natural environment in times of armed conflict and that they had been ratified by a large number of countries, because, however extensive the participation, their provisions were useless if they were not observed in times of armed conflict. Strict compliance with the provisions of the Conventions was particularly important for the protection of the environment because it helped to prevent serious and lasting damage to the natural environment, which was often difficult to repair and whose consequences would have to be borne by entire generations.

16. Verification machinery should receive priority attention. Both the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques and Protocol I Additional to the Geneva Conventions envisaged such machinery. The first provided for a Consultative Committee of Experts, and the second established an International Fact-Finding Commission which would come into being once the necessary number of ratifications had been received. After listening with interest to the many delegations which had spoken in favour of strengthening fact-finding measures during the consideration of the report of the Special Committee on the Charter, Switzerland was confident that those States would take advantage of the opportunity to put their words into practice by subscribing to the relevant provision of additional Protocol I.

17. The International Conference of the Red Cross and Red Crescent to be held shortly at Budapest was the most appropriate place for an in-depth examination of the issue of the environment and armed conflicts in all its aspects. His delegation therefore supported the ICRC proposal to convene a working group to examine the content and limitations of and possible lacunae in the international rules on the subject. The relevant international conventions should be examined in the light of the events that had taken place since their entry into force to ascertain whether their pertinent provisions continued in practice to guarantee full protection for the natural environment. In his delegation's view that protection was adequate provided the conventions in question were widely disseminated and strictly applied. As the United States delegation had pointed out, each State's attitude of responsibility played an important role in that respect.

18. His delegation hoped that the recent tragic experiences would not be wasted, and was willing to participate in the elaboration of new international rules that would help to improve protection for the environment.

19. TUNKU DATO' NAZIHAH MOHAMMED RUS (Malaysia) said that the recent Gulf war had clearly shown the horrendously devastating effect that warfare could have on the economy, society and environment of the region concerned and on the

(Tunku Dato' Nazihah Mohammed Rus, Malaysia)

rest of the world. Even as she spoke, some 200 oilfields were continuing to burn despite international efforts to remedy the situation. Protection of the environment was thus an urgent concern for all mankind because its impact was felt beyond national boundaries. As Principle 24 of the Stockholm Declaration of 1972 made clear, the only effective means of protecting and preserving the environment at the world level was international cooperation.

20. The obligation to cooperate, which was incumbent upon all States, manifested itself as a duty to act in good faith in the general interest. It would be difficult to provide a list of exactly what action was required, but there were indications that States had already cooperated in areas such as information, consultations, mutual assistance and negotiations which often complemented the systems of environmental protection provided for by international law. The multilateral treaties on military activities were certainly relevant, not only for disarmament or humanitarian purposes but also for their objective of preserving the environment. Several of those treaties contained provisions on the subject. Some 54 countries had so far signed the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. Nevertheless, the Gulf war had shown that the Convention was inadequate and it had not proved effective in protecting the environment. However, that war and the steps taken by the United Nations during and after it to destroy chemical weapons in Iraq had reinforced international concern about the environmental effects of military activities.

21. In practice, all military activities, both in time of war and in peacetime, had environmental implications. From ancient times, the destruction of the environment had been an established method of both defensive and offensive warfare. Damage was caused by the direct effects of weapons and by the secondary effects. All kinds of dangerous wastes, including unexploded missiles and mines, remained in relatively large amounts on the battlefield long after the cessation of hostilities. The problems that that situation caused for the rebuilding of the countries concerned were obvious.

22. Modern technology helped to increase the systematic destruction of the environment. The growing use of environmentally dangerous chemicals in warfare could destroy forests and crops and cause severe health hazards for the population. The damage to living creatures and plants upset the ecosystem. In general, the indirect effects affected much wider areas. The rehabilitation of the environment could take decades or centuries. For example, the defoliants used by the United States in South Viet Nam had devastated crops and 1,500 square kilometres of forest.

23. The environmental impact of a large-scale nuclear war would be of a different order of magnitude. The combined effects of radioactive fallout, depletion of the ozone layer and climate change would represent immeasurable disaster for most of the globe.

(Tunku Dato' Nazihah Mohammed Rus,
Malaysia)

24. Peacetime military activities which also affected the environment included the production and testing of weapons, military training and exercises, the establishment of bases, and accidents. For example, it was calculated that the radioactive debris released into the atmosphere by atmospheric tests of nuclear weapons was between 100 and 1,000 times more than that released in the accident at Chernobyl.

25. In general, military accidents did not affect the environment. Those which did awake widespread attention were those involving nuclear weapons or nuclear reactors. Crashes of United States bombers equipped with nuclear weapons, as at Palomares in Spain in 1966 and Thule in Greenland in 1968, had entailed laborious and costly clean-up operations. Other examples of accidents included the case of the reactor-powered satellite Cosmos 954 in Canada in 1978, and the sinking of Soviet nuclear-powered submarines in the North Atlantic in 1988 and 1989.

26. The militarization of human society, as represented by the level of armaments and military outlays, had resulted in an unconscionable waste of resources and energies. The end of the cold war opened perspectives for preparing collective approaches to peacemaking and conflict control. In her delegation's opinion, the international community should give priority to reducing nuclear weapons, arresting the uncontrolled proliferation of modern weapons of mass destruction, concluding a convention for the comprehensive prohibition of chemical weapons, and strengthening the basic obligations of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on their Destruction. Another area which should be addressed was the secrecy of military operations, since the public had a right to know the adverse effects of military operations on the environment.

27. With respect to implementation of Security Council resolution 678 (1990), his delegation agreed with the Secretary-General that, as the latter had indicated in his report on the work of the Organization (A/46/1), in order to preclude controversy, the Council should satisfy itself that the rule of proportionality in the employment of armed force was observed and the rules of humanitarian law applicable in armed conflicts were complied with. Indeed, the excessive use of force in violation of the principle of proportionality and of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques had caused great harm to the environment. The situation was further aggravated by the irresponsible actions of Iraqi forces in burning oilfields in Kuwait.

28. Malaysia wished to impress upon the international community the need to ensure that military activities conformed to environmental norms and regulations. It also supported the proposal that the General Assembly should set up a committee to make appropriate recommendations for a mechanism to combat the exploitation of the environment in times of armed conflict.

29. Mr. SARDENBERG (Brazil) said that it was appropriate for the Sixth Committee to address the issue of the exploitation of the environment as a weapon in times of armed conflict, as suggested by Jordan. The inclusion of the item in the agenda for the current session might be even more justifiable in the aftermath of a conflict in which deliberate and indiscriminate attempts had been made to use the environment to achieve military purposes. On the basis of any criteria, the harm to the environment caused by the Gulf conflict was serious; no less serious was the potential threat posed by existing nuclear arsenals and other weapons of mass destruction, as had been recognized in the 1972 Stockholm Declaration.

30. With respect to the procedural aspects of consideration of the item, Jordan, after pointing out the inadequacies of the United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, had suggested in its explanatory memorandum (A/46/141, annex) that a committee should be established to deal with the question and submit to the General Assembly, if possible by the forty-seventh session, proposals for an efficient mechanism to combat the exploitation of the environment in times of armed conflict. Brazil had signed and ratified the 1977 Convention and had taken part in the negotiations leading up to its adoption. At that time, the Brazilian delegation had indicated that the draft was a painstakingly negotiated document and, as such, inevitably fell short of the original position of any individual delegation. While not fully satisfied with the draft Convention, the Brazilian delegation had accepted it, acknowledging that it constituted a realistic compromise. Ultimately, the 1977 Convention had been the result of a reaction to attempts to harness the forces of nature for hostile purposes.

31. Concern for the protection of the environment was a relatively recent phenomenon, but there were a number of legal instruments setting limits to the right of belligerents to destroy the natural environment, as previous speakers had pointed out in greater detail. One could argue that the fragmentary nature of the rules that applied to protection of the environment was enough to justify a new international instrument. Yet, the main problem did not lie in a lack of rules but in non-compliance with existing rules and in certain provisions that made such rules ineffective.

32. Much could be said to demonstrate the complexities and limitations of an exercise such as the one proposed by Jordan. However, in view of the relevance of the subject and the fact that it had only just been included in the agenda, States should be given more time to consider it and be invited to express their views before the forty-seventh session of the General Assembly. Such timing would also give the international community the benefit of having the results of the United Nations Conference on Environment and Development, to be held at Rio de Janeiro in 1992, and of the 26th International Conference of the Red Cross and the Crescent, to be held at Budapest in November/December 1991.

33. Mr. VILLAGRAN KRAMER (Guatemala) said that his delegation had followed with interest the debate on the Jordanian proposal, particularly the statement by the observers of the International Committee of the Red Cross and Switzerland on the applicability of the Geneva Conventions and of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. Disapproval had been expressed because the latter convention had not prevented horrendous acts from being commited during the Gulf war. That convention did however contain provisions for its own amendment; in principle, it was for States parties to review the amendment procedure. On the other hand, States parties to the Convention were not the only ones expressing their dissatisfaction with it; other States that had not ratified the Convention might do so if the text were amended.

34. All aspects of the question ought to be reviewed, both at the meetings to be held in Geneva in July and August 1992 and elsewhere. To be more specific, the Geneva meetings need not be an obstacle or a hindrance to, or a constraint on, analysis of the issue by either the Sixth Committee or, of course, the General Assembly.

35. Three fundamental issues must be taken into account in that connection: pollution of watercourses, transboundary pollution and the concept of global commons. Obviously, concern for the environment and at the harmful effects of human actions must not be confined to cases of war. It was not war as such that caused the greatest difficulties.

36. Indeed, when reading of the tragic effects in Europe of the two world wars, one could suppose that the warring countries were impelled by certain Western cultural values to carry through military operations with some caution. Although people had been killed and crops had been destroyed, Europeans had not damaged their forests nor poisoned their waters. Now, however, the situation was different: highly civilized nations thought they must use means of warfare whose consequences were unprecedented. War and peace had therefore taken on a new dimension, one that had to be faced up to. The matter was too important not to be examined in various forums.

The meeting rose at 11.05 a.m.

UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
20th meeting
held on
Thursday, 24 October 1991
at 3 p.m.
New York

SUMMARY RECORD OF THE 20th MEETING

Chairman:	Mr. TETU (Vice-Chairman)	(Canada)
later:	Mr. AFONSO (Chairman)	(Mozambique)

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The meeting was called to order at 3.20 p.m.

AGENDA ITEM 140: EXPLOITATION OF THE ENVIRONMENT AS A WEAPON IN TIMES OF ARMED CONFLICT AND THE TAKING OF PRACTICAL MEASURES TO PREVENT SUCH EXPLOITATION (continued) (A/46/141, A/46/358-S/22931)

1. Mr. VAN DE VELDE (Netherlands), speaking on behalf of the 12 member States of the European Community, said that they welcomed the decision to place item 140 on the agenda of the Sixth Committee. In considering the use of the environment as a weapon in times of armed conflict one could not ignore the unprecedented environmental damage caused by Iraq in Kuwait. The deliberate torching of the oil fields represented Kuwait's most pressing environmental problem, beside which all else paled into insignificance according to a report to the Secretary-General based on the findings of a United Nations mission. There could be no doubt that the Iraqi activities had been in flagrant contravention of existing international law, which limited the rights of belligerents to cause suffering and injury to people and to wreak destruction on objects. Massive ecological damage resulting from armed conflict could endanger the very basis of life on the planet.

2. What was required to protect the environment in times of armed conflict was effective implementation of existing international obligations under the laws of war as they related to the environment. Rushing to bring in new legislation in reaction to the environmental damage caused in Kuwait and the Gulf might very well be counter-productive in the long term. The discussion of the item should cover all aspects of the multifaceted topic of protection of the environment during times of armed conflict in general that would require a review of existing international humanitarian law, to determine which rules related to the protection of the environment, their scope, and the extent to which they commanded universal adherence. The existing law might need to be strengthened, for some instruments, such as Additional Protocol I to the Geneva Conventions and the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, lacked universality.

3. It would also be necessary to examine the relationship between international environmental law and humanitarian law, which seemed to be developing along rather independent lines, even though the development of environmental law had consequences for the interpretation of rules concerning the protection of the civilian population. In that connection, the importance of adherence to the relevant existing legal instruments in the field of humanitarian law and of full implementation of their provisions should be emphasized. Related efforts should also be looked at. The Twelve considered it very important to examine the results of the twenty-sixth International Conference of the Red Cross and Red Crescent, to be held later in 1991 in Budapest.

(Mr. van de Velde, Netherlands)

4. The framework within which the topic was to be considered should be identified as clearly impossible and a realistic approach should be taken. It would be appropriate for the General Assembly to seek the views of Member States on the matter, as several delegations had suggested.

5. Mr. CRAWFORD (Australia) said that Jordan was to be congratulated for bringing before the Sixth Committee the matter of exploitation of the environment as a weapon, which had been highlighted by events in the Gulf, from whose effects scientists had calculated it would take decades to recover. The world had been appalled by the havoc caused by the massive release of oil into the Gulf and the firing of scores of oil wells. Such damage must not be allowed to happen again.

6. The 1977 United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques was relevant to the agenda item, as were the 1949 Geneva Conventions on the laws of armed conflict and the 1977 additional Protocols thereto, to which Australia was a party.

7. What had been done in Kuwait was clearly illegal under the customary rules of warfare and the traditional concepts of proportionality and military necessity. It had been suggested that it was not further laws on the matter that were needed, but rather a more effective implementation of existing rules. His delegation remained open-minded on that point, but believed more work needed to be done to clarify the issues.

8. His delegation welcomed the suggestion by the representative of Jordan that the item's title should be broadened to "Protection of the environment in armed conflict", since it was not just the use of the environment as a weapon of war that was at stake but the whole environmental impact of armed conflict. That issue had already been discussed in various forums, such as the conference held in London in June 1991 on a possible fifth Geneva Convention on the protection of the environment in time of armed conflict. The United Nations Environment Programme had taken an interest in the subject, and Australia had been privileged to attend a meeting of experts on the use of the environment as a tool of conventional warfare hosted by the Government of Canada in July 1991, at which it had been agreed that the application and development of the law of armed conflict must take account of the evolution of environmental concerns generally, although no consensus emerged on how to proceed. In addition, the Sixth Committee should have the benefit of the conclusions of the forthcoming International Conference of the Red Cross and Red Crescent. His delegation would support a resolution on the item calling on Member States to make their views known for further consideration at the forty-seventh session.

9. Mr. AL ADWANI (Kuwait) said that the countries of the civilized world had already acceded to a large number of instruments on environmental protection and on disarmament. What was therefore needed was not a new order relating to environmental protection but renewed commitment by the States parties to the

(Mr. Al Adwani, Kuwait)

existing instruments to adhere to their provisions in order to ensure the protection of the environment and enhance their own credibility.

10. His country had welcomed the inclusion of item 142 in the agenda because of its deep interest in the protection of the environment and of natural resources and in the prevention of their exploitation as a weapon of intimidation. It was to be regretted, however, that the explanatory memorandum annexed to the request for the inclusion of the item had failed to note that the environmental damage done to Kuwait and to the region had been the result of a deliberate act planned since the first days of the Iraqi occupation and not a consequence of military operations. As early as 20 August 1990, his country had addressed a letter to the Secretary-General, (S/21572), informing him that the Iraqi invasion forces had mined all vital Kuwaiti installations, including oil installations, in preparation for their destruction at the outset of any operation for the liberation of Kuwait. That, indeed, was what had happened, and the Iraqi forces had pursued a scorched-earth policy, setting fire to more than 700 oil wells and releasing several million barrels of oil into the waters of the Gulf in the most significant incident of marine pollution in history.

11. The inhuman practices in which the Iraqi forces had engaged during their occupation of the country had prompted the dispatch of a high-level United Nations mission to Kuwait directly after its liberation. The report of that mission, circulated in document S/22535, had described the full extent of the air pollution in Kuwait caused by the smoke and toxic gases emitted by the burning oil wells. The crimes against humanity committed by the Iraqi regime had included exploitation of the environment as a weapon with which to perpetuate its occupation of Kuwait and confront the international community's rejection of that occupation. The amount of crude oil released from storage tanks into the Gulf was estimated at some 6 million barrels, and another 4.2 million barrels had been released from three Iraqi oil tankers.

12. Enormous pools of crude oil had been created by oil flowing from wells that had been damaged but not set on fire, and petroleum had been pumped into the trenches along Kuwait's borders with Saudi Arabia to be ignited the moment the operation for the liberation of Kuwait should begin. Those pools of oil and petroleum were continuing to have a devastating impact on livestock and life on land, and land permeated with oil would continue to be a major environmental problem for the country for a long time to come. Kuwait would suffer for an indefinite period of time from an unprecedented environmental catastrophe whose effects on water, air and livestock were apparent but whose unknown future impact on human health was a source of even greater concern.

13. Against that background, given its concern for the protection of the natural environment in general and in its desire that there should be no recurrence of catastrophes brought about by those who had no appreciation of the importance of environmental protection and placed no value on nature and on human life, his delegation was pleased to announce that Kuwait was prepared

(Mr. Al Adwani, Kuwait)

to cooperate with all Governments, agencies and governmental and non-governmental organizations with a view to ensuring compliance with such principles and norms as would ensure the suppression and punishment of the environment for military or other hostile purposes, whether in time of war or peace.

14. Mr. YAMADA (Japan) said that even though the Gulf war had been brought to an end through the concerted efforts of the international community, the destruction it had wrought had not ended: there was massive oil pollution of the Gulf and air pollution caused by the burning of oil wells. Recognizing the seriousness of the impact which the release of oil into the Gulf was having on the environment, Japan had been participating in international clean-up efforts by supplying oil booms and sending experts to help with damage control. Since pollution such as that created in the Gulf region could have grave effects on the future of human life everywhere, it was imperative that the international community address the issue of arbitrary environmental devastation in time of armed conflict.

15. In that connection the Sixth Committee might wish to consider, first, what international law was applicable to the protection of the environment in time of armed conflict and, second, what measures could be taken for the effective implementation of the applicable international law so as to prevent any recurrence of problems such as those existing in the Gulf region.

16. Because any large-scale armed conflict threatened the environment, international efforts to prevent such conflicts were of primary importance. When an armed conflict did occur, the issue of environmental protection must be considered in the context of the law regulating such conflicts. His delegation thought it was both significant and timely for the Sixth Committee to take up the item at the current session and to consider it in a practical and non-political manner while bearing in mind that legal rules aimed at protecting the environment had not yet been established under customary international law. Careful consideration should be given to the applicability of existing international law and measures that could be taken to ensure its effective implementation. He trusted that the forthcoming International Conference of the Red Cross and Red Crescent would yield some important suggestions as to the direction that might be taken by the work of the Sixth Committee, which should request the Secretariat to submit to it a report on the findings of the Conference; comments could then be solicited from Member States and international organizations at the next session.

17. Ms. FEARNLEY (New Zealand) said that a corpus of international law on the exploitation of the environment as a weapon in times of armed conflict already existed, in the form of treaties and customary international law, and an examination of that material might indicate that international law was less lacking in that respect than was sometimes thought to be the case. In that context, she noted the two international instruments concluded in the 1970s with the aim of addressing particular aspects of the issue, namely the

(Ms. Fearnley, New Zealand)

Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, adopted by the United Nations on 10 December 1976, and the 1977 Additional Protocol I to the Geneva Conventions of 1949. The 1976 Convention prohibited military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as a weapon of warfare, while the 1977 additional Protocol dealt with the environment as a victim of warfare. Her country was a Party to both instruments.

18. In addition to the Conventions there was a solid foundation of existing international customary law which had established the principle that the only legitimate military objective that States might pursue in time of war was the weakening of the military forces of their enemies. As a corollary to that principle, damage which was not necessary for the attainment of a definite military objective was prohibited and illegal. It was Iraq's flagrant violation of those principles and of many other rules of international law in the course of its invasion of Kuwait that had drawn renewed attention to the subject of environmental warfare. Iraq stood rightly condemned for its environmental destruction in Kuwait and in the Gulf, and for its many other illegal actions. The international community must ensure that it was able to confront that serious development by ensuring that any country engaging in such illegal actions must be fully called to account and that international law in that regard was duly respected in the first place.

19. One priority for all States must be the effective implementation of the existing law on the protection of the environment in time of armed conflict. A prerequisite for that implementation was the dissemination of appropriate military manuals and instructions to military commanders in the planning and preparation of military activity.

20. The forthcoming International Conference of the Red Cross and Red Crescent would provide an opportunity for further discussion of the protection of the environment in times of armed conflict. Her delegation would support the proposal to include a request to States to express their views on the issue, taking into account the outcome of the Conference, in any draft resolution that might result from the Sixth Committee's deliberations on the item.

21. Mr. CORELL (Sweden) said that the Iraqi forces, during their illegal occupation of Kuwait, had caused destruction of the environment on an unprecedented scale, thus underlining the need for the United Nations to take measures to prevent such unacceptable forms of warfare in the future. His delegation accordingly welcomed the timely initiative of Jordan submitted in document A/46/141.

22. The acts of destruction perpetrated by the Iraqi occupation forces in respect of oil installations were obviously in violation of basic principles of customary law and the relevant international treaties, and were clearly

(Mr. Corell, Sweden)

without any military justification. However, the existing rules of international law were not without shortcomings in that they did not make specific reference to environmental damage: such insufficiencies in the existing legal regime must be remedied. In particular, Governments should be recommended to consider identifying weapons, hostile devices and ways of using environmentally damaging techniques with a view to strengthening the international law prohibiting their use. The conclusions reached at the forthcoming International Conference of the Red Cross and Red Crescent should be duly taken into account in that connection.

23. In order to strengthen the existing legal rules and to assess the need for establishing new standards, the Secretary-General should be requested to solicit the views of Member States on the rules and principles of international law relating to the protection of the environment in time of armed conflict, and to submit a report on that item to the forty-seventh session of the General Assembly.

24. Mrs. FLORES (Uruguay) recalled that the Heads of State and Government who had participated in the first Latin American summit in July 1991 had accorded priority to norms applicable in armed conflicts and the definition of a legal framework for the protection of the environment. Document A/46/141 revealed the seriousness of the damage inflicted by the Gulf conflict on the people of the region and the environment, the urgent need to prevent the exploitation of the environment as a weapon, the shortcomings of the existing legal framework, and the need to increase cooperation among States and establish appropriate mechanisms to combat the exploitation of the environment in times of armed conflict.

25. It was indisputable that the environment was an indivisible whole and that damage to any part of it had repercussions for the whole. Moreover, the effects of environmental damage were often unpredictable and sometimes irreversible. Prevention was of crucial importance, whether an armed conflict existed or not; agreements must be reached in order to protect shared natural resources. Specific provision must be made for the exchange of information, consultations, and the possible participation of third parties directly affected by environmental damage, as well as the obligation to report any suspected exploitation of the environment as a weapon. Mechanisms could also be established to monitor situations in which it was believed that the environment was to be used as a weapon. At a later stage consideration would have to be given to a jurisdictional system to deal with any disputes which arose.

26. Since existing international law, both customary and conventional, contained norms to protect the environment at times of armed conflict it could be concluded that the problems which arose did not derive from any shortcomings in the law, but from non-fulfilment of the law. At the same time, the possibility of supplementing existing norms should not be excluded. A number of drafts under consideration by the International Law Commission

(Mrs. Flores, Uruguay)

included articles concerned with the environment, such as article 19 on State responsibility or articles 22 and 26 of the Draft Code of Crimes against the Peace and Security of Mankind. It would be worth seeking the views of Governments and relevant international organizations on the possibility of formulating a new convention emphasizing prevention or the adoption of practical measures to prevent the exploitation of the environment as a weapon. The quality of life of the entire planet was at stake.

27. Mr. ADHIKARI (Nepal) said that in recent decades the proliferation of highly toxic materials, climate change, ozone depletion and pollution had become acute problems which crossed national borders. As indicated in document S/22535, irreparable damage had been done by Iraq during its occupation of Kuwait; as a result of its use of the environment as a weapon of mass destruction, the Gulf war had devastated the atmosphere of the whole region.

28. Action that harmed the environment violated not only the customary rules of international law but also conventional law. All Member States must ratify existing treaties on the environment as soon as possible. Basically, what was lacking was not the law but the political will to implement the law; there was a whole body of law embodying general principles on the protection of the environment. Nevertheless it had been demonstrated in the Gulf war that some of the existing rules were inadequate. His delegation agreed, however, that the Committee should wait for the results of the forthcoming International Conference of the Red Cross and Red Crescent, which would provide an opportunity to examine legal lacunae in the area of environmental protection during times of armed conflict. The United Nations Conference on Environment and Development to be held in 1992 would also provide a favourable opportunity for such examination. If those Conferences did not formulate specific provisions for an efficient mechanism to combat the exploitation of the environment in times of armed conflict, the problems might have to be considered in greater length at the forty-seventh session of the General Assembly.

29. Mr. IBRAHIM (Yemen) said that his country, like the other States of the region, had been affected by the damage caused by the Gulf war. It had suffered from the smoke from the burning of oil wells and the seepage of large amounts of oil into the sea. In some areas, black rain had fallen, destroying crops and polluting the soil.

30. The damage caused to the environment as a result of the war had emphasized the importance of adherence to the legal norms on the prohibition on causing damage to the environment in times of armed conflict, norms which had been incorporated in a number of international conventions in the field of humanitarian law, in particular, the Geneva Conventions of 1949 and Additional Protocol I thereto and the 1977 United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, to which Yemen was a party.

(Mr. Ibrahim, Yemen)

31. Those and other instruments required that States parties should adhere to them strictly, respect them in time of war, provide instruction on them in military institutes and colleges and ensure that they were reflected in national military legislation. They also called on other States that had not acceded to them to do so.

32. Existing provisions on the subject suffered from some defects and ambiguities. It was therefore essential to prepare a new instrument to remedy those defects, for example, by providing for investigatory machinery, clarifying certain procedural issues relating to States' fulfilment of their commitments and specifying the authority empowered to evaluate damage done to the environment during a war and responsibility for it.

33. His delegation agreed with previous speakers concerning the great importance of the forthcoming International Conference of the Red Cross and Red Crescent. The conclusions of that Conference would undoubtedly be a good basis for treatment of the subject by the Sixth Committee at the next session of the General Assembly.

34. At the current stage, it would be appropriate for the Secretary-General to solicit the views and proposals of States and competent intergovernmental organizations on the subject and to report to the General Assembly at its forty-seventh session.

35. His delegation was willing to accept any other proposals from delegations that would lead to an appropriate consensus formula that would provide the maximum protection for the environment in times of armed conflict.

36. Mr. SHESTAKOV (Union of Soviet Socialist Republics) said that Iraq's recent aggression against Kuwait had once again demonstrated the need to prevent the exploitation of the environment as a weapon. However, the Jordanian proposal was just one aspect of a broader problem of legal regulation of the methods and means of waging war. It was most important of all to prevent the outbreak of armed conflicts and try to settle problems by peaceful means; if armed conflict did occur the greatest possible protection must be ensured for all victims. Iraq's aggression and its consequences had raised a whole range of questions including possible omissions in international humanitarian law and the content and scope of existing norms. It had been clear on a number of occasions that not all aspects of the problem of the environment were covered in existing international law. For example, the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques did not fully cover all aspects of environmental modification.

37. The Soviet Union attached great importance to efforts by States and international organizations to prevent conflicts before they emerged or at their early stages. It would be worth establishing an effective international mechanism to prevent the possibility of using the environment as a weapon and

(Mr. Shestakov, USSR)

to settle ecological disputes, while in no way underestimating the significance of existing mechanisms. Despite some omissions and shortcomings, the existing norms of international humanitarian law provided a solid basis, but those mechanisms were by no means always used and, if they were used, were not always used effectively. The 1949 Geneva Conventions and the 1977 additional Protocols thereto were not playing the role assigned to them, partly because some militarily powerful States were not yet parties to those Protocols. The Soviet Union, which had ratified the additional Protocols in 1989, considered it important that States should not only ratify the additional Protocols, but also make the declaration provided for in article 90 of Protocol I.

38. His delegation believed that the forthcoming International Conference of the Red Cross and Red Crescent would help find answers to many of the questions raised in the Committee, and would largely determine what action should be taken in the United Nations. Solutions would have to be found to the problem on a multidisciplinary basis, taking into account ecological, military, legal and other aspects. The views of Governments and international organizations should be sought in order to determine the direction of the Committee's future work.

39. Mr. AHMED (Iraq) said that his delegation greatly appreciated the valuable remarks made by the representative of Jordan in introducing the item and shared the concerns expressed on such a vital matter. It would support the introduction of a procedural draft decision on the item that could be adopted by consensus.

40. Since a number of delegations had attempted to distort what had happened and was still happening as a result of the crisis by presenting a politically biased view that expressed narrow and selfish interests and was remote from any objective consideration of the environmental damage suffered by the region, he would like to remind delegations of the true nature of the environmental catastrophe in which the Iraqi people had been involved.

41. His delegation shared the concern of others for environmental protection and took note with interest of the proposals that they had made, including that for supplementing the Geneva Conventions and their additional Protocols. It realized the importance of accession to and compliance with the relevant international instruments.

42. His delegation would like to call the attention of the Committee to the letter dated 12 August 1991 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General (S/22931). Referring to the letter dated 13 July 1991 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait addressed to the Secretary-General (S/22787), it had pointed out that, while Iraq affirmed its willingness to do everything to protect the environment and not to exploit it as a weapon in times of armed conflict, the letter in question had disregarded the appalling environmental damage caused

(Mr. Ahmed, Iraq)

by the coalition forces in Kuwait and Iraq. That damage had affected water purification stations and related chemical facilities, drainage and sewage stations and pipelines, oil refineries, electric power stations and distribution networks and had thus caused untreated effluent to pour into the streets of towns and led to heavy contamination of rivers by sewage, the piling up of garbage, environmental damage to fields and orchards and a serious deterioration in public health, as described in the Ahtisaari report of 20 March 1991 (S/22366) and the report of 15 July 1991 prepared by the mission led by Sadruddin Aga Khan (S/22799). Allied aircraft had, moreover, dropped thousands of tons of bombs on towns and rural areas, roads and bridges, cultivated fields and industrial installations, inflicting serious damage on the environment.

43. The maintenance of the embargo imposed on Iraq since August 1990 had, in turn, inflicted more damage on the environment and on all forms of life in Iraq. It was appropriate to recall, in that connection, the statement made by the representative of the United States of America to the Committee to the effect that, under article 147 of the fourth Geneva Convention of 1949, extensive destruction of property that was not justified by military necessity was treated as a "grave breach" and that persons committing those breaches had personal liability for their actions.

44. The environmental damage caused in the Gulf, as it related to Iraq, had been addressed by the relevant Security Council resolutions. The United States and its allies, however, remained outside the scope of the Security Council resolutions and had not been confronted with their legal and moral responsibility for the deliberate destruction that they had inflicted on the environment, on the people and on all forms of life in Iraq, in violation of the Geneva Conventions, the Charter of the United Nations and the Security Council resolutions themselves.

45. With regard to the pronouncements of the representative of Kuwait, that representative must be aware that the statements of those who sought protection through a war conducted by mercenaries did not deserve to be accorded credibility.

46. Mr. AL-SUWAIDI (United Arab Emirates) said the fact that the item under consideration, which had been included in the agenda at the request of Jordan, had been referred to the Sixth Committee was proof of the importance accorded to it. One example of the damage caused by the exploitation of the environment as a weapon in times of armed conflict was the unprecedented enormities perpetrated by Iraq against Kuwait through the burning of oil wells, which had polluted the air and the sea and poisoned marine life. There was also a great risk of disease from the pollution which had swept over the region as a whole. It would take decades to restore the previous state of the environment there.

(Mr. Al-Suwaidi, United Arab Emirates)

47. There were numerous international instruments that provided for the protection of the environment, such as The Hague Conventions of 1899 and 1907 respecting the Laws and Customs of War on Land, Additional Protocol I of 1977 to the Geneva Conventions of 1949, and the United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. There was thus an international prohibition on States interfering with the environment. Non-accession to the relevant instruments did not mean the absence of international responsibility. International law was an indivisible whole, and State responsibility was based on the requirement to respect international instruments, customs and ethical norms.

48. During the 20 years that had elapsed since the Stockholm International Conference on the Human Environment, there had been increasing awareness of the magnitude of environmental problems, and with the establishment of the United Nations Environment Programme, environmental concerns had been introduced into the United Nations system as a whole. However, the dangers of damage to the environment made a call for its protection a matter of urgency. What was required was a scientific evaluation with a view to the drafting of an effective strategy to reduce such damage. It was necessary also to strengthen legal formulas on the basis of the historic responsibility of States to preserve nature for present and future generations. His delegation therefore accorded great importance to the forthcoming International Conference of the Red Cross and Red Crescent, which would deal, in particular, with the question of protection of the environment in times of armed conflict.

49. Mr. Afonso (Mozambique) took the Chair.

50. Mr. HANAFI (Egypt) said that the Gulf war had lent new urgency to the question of environmental damage resulting from armed conflict, and that Iraq's liability for its violations of the rules of international law in that regard had been clearly affirmed in Security Council resolution 687 (1991). There were, however, grounds for the view that the existing rules of customary and treaty law could be strengthened, and a meeting of experts had been held at Ottawa in July 1991 to discuss that issue and to review the relevant instruments on environmental damage resulting from armed conflicts. Opinions at that meeting, however, had diverged on the question whether the best approach in future would be to work towards a convention or declaration of principles or to stress the need for effective implementation of existing rules. The Sixth Committee could make its contribution by recommending the General Assembly to seek the views of Member States on the issue, which would, as earlier speakers had mentioned, also be discussed at the forthcoming International Conference of the Red Cross and Red Crescent.

51. Mr. AL ADWANI (Kuwait), speaking in exercise of the right of reply, said that the representative of the Baghdad regime had been wholly incorrect in referring to the coalition of forces opposing the Iraqi invasion of Kuwait as "mercenaries": as everyone was aware, the coalition was a combined force set up by the international community in pursuance of Security Council resolutions.

The meeting rose at 5.05 p.m.